

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case No. 2:03-cr-108
	:	
v.	:	Judge Holschuh
	:	
GWENDOLYN ROGERS,	:	
	:	
Defendant.	:	
	:	

ORDER

On August 22, 2003, Defendant pled guilty to a charge of possession with intent to distribute in excess of 500 grams of cocaine, in violation of 21 U.S.C. § 841(a)(1). Defendant was sentenced on October 31, 2003 to 84 months in prison followed by 4 years of supervised release. Defendant did not appeal her conviction or sentence.

On May 1, 2006, Defendant moved to amend her sentence in light of the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005). (Doc. # 22). Defendant contends that, during sentencing, the Court stated that it would sentence Defendant to less than 7 years if it were possible. Defendant argues that, now that the sentencing guidelines are advisory, as detailed in Booker, her sentence should be amended.

However, the Sixth Circuit has made clear that, for those defendants who have already been sentenced, Booker applies only if their cases were pending on direct appeal on the date Booker was decided. See Humphress v. United States, 398 F.3d 855 (6th Cir.), cert. denied, 126 S. Ct. 199 (2005). Because Defendant's case was not pending on direct appeal on the date Booker was decided, this Court does not have the authority, under Booker, to review Defendant's

sentence. Defendant's motion to amend her sentence (Doc. # 22) is therefore **DENIED**.

IT IS SO ORDERED.

July 11, 2006

/s/ John D. Holschuh
John D. Holschuh, Judge
United States District Court